The motion contends that the Department erred in considering the testimony relative to the title of Linton W. Stubbs, and that the only question involved was the character of the land.

Said Stubbs appeared at the date set for the hearing, and introduced his own testimony and that of three witnesses, without objection. The hearing was then continued, by agreement, to allow Belton to take the depositions of three witnesses, which constituted his entire defense. Belton did not testify. His objection to the consideration of Stubbs's evidence comes too late.

While the patent from the State did not issue to Linton W. Stubbs's grantor, Frank P. Stubbs, until July 10, 1913, it was established at the hearing that the State had issued to said grantor a certificate of sale on November 24, 1860. One of Belton's witnesses testified that Mose Stevenson, father-in-law of Belton and also of one of Belton's witnesses, was in the employ of Stubbs "for a good long while," and it is this testimony and that of another witness to which reference was made by the Department as warranting the inference that Belton knew when he made entry that the land had been deeded by the State to said Stubbs. But whether he did so know or not, Belton was charged with notice of Stubbs's title, herein found to be a valid one, the records of the parish having shown since 1881 that the land had been transferred to him and that State, county and levee taxes had been paid thereon. See Krueger *v.* United States (246 U. S., 69).

The preponderance of the testimony was to the effect that at the date of the hearing all but about 25 acres of the land was low and wet—of the character contemplated by the granting act, and a witness who had been familiar with the land since 1859 testified that there had been no change in its character since that year.

The motion for rehearing is denied.

GRAY TRUST COMPANY (ON REHEARING).

Decided February 3, 1919.

MINERAL LAND—DEPOSIT OF LIMESTONE.

The existence of a limestone deposit which is or may be used in construction or surfacing of roads, or as an ingredient in the manufacture of Portland cement, is not sufficient to subject it to mineral location when found in a region containing immense quantities of similar deposits more favorably situated, and not otherwise possessing attributes which would bring it within the category of mineral deposits made subject to location under the mining laws.

VOGELSANG, *First Assistant Secretary:*

This is an entertained motion for rehearing filed by the Gray Trust Company in the matter of the protest of the Government against

three asserted placer mining locations denominated the Emigration Rock and Emigration Rock Nos. 2 and 3 embracing the W. ½ NE. ¼, W. ½ SE. ¼ and W. ½, Sec. 22, T. 1 N., R. 2 E., Salt Lake City land district, Utah, wherein the Department by decision of June 1, 1917 [not reported], affirmed the decision of the Commissioner of the General Land Office of February 19, 1917, holding the alleged locations to be null and void because not supported by sufficient discovery and also for want of good faith on the part of the mineral claimants.

The claims in question purport to have been located in 1909 and 1910, and are within the limits of the Wasatch National forest. They are also included within an area reserved "subject to all legal rights heretofore acquired under any law of the United States" from all forms of location, entry or appropriation, "whether under the mineral or nonmineral land laws of the United States," by the act of September 19, 1914 (38 Stat., 714).

February 14, 1911, the Gray Trust Company claiming as transferee of the original locators filed application for patent to the area in question, but withdrew the same February 6, 1912. The application was by the Commissioner's decision of April 9, 1912, formally rejected, but in the same decision the local officers were directed to proceed against the claims on the charges:

1. That no discovery of mineral has been made.
2. That $500 has not been expended in improvements and development.
3. That these claims were not located in good faith for mining purposes, but for the value of the lands as a summer resort and a site for cottages and camping purposes.

Hearing was had, after due notice, on said charges commencing December 9, 1912, with the result above stated. At the hearing the claimant sought to show that the land in question was chiefly valuable on account of deposits of limestone, sandstone, fire clay and aluminum disclosed thereon. From a careful reexamination of the record the Department is not convinced that the land contains fire clay in workable quantities, if indeed the small deposit referred to as such can be properly termed fire clay, or that metallic aluminum can be profitably extracted from any substance shown to exist upon the land.

The motion challenges the correctness of the decision of the Department in so far as it concerns a deposit of sandstone situated in the northwest corner of the area asserted by witnesses for claimant to be commercially valuable as a building stone and to be of the same character and quality as the deposits situated on a tract adjoining the area here in question on the west which had been quarried and disposed of in Salt Lake City, from which the land is about 10 miles distant. In connection with the motion, however, the claimant filed

two newspaper clippings wherein it is stated that one LeGrande Young, president and owner of all the outstanding stock of a railroad company, owning a railroad constructed for the purpose of transporting to Salt Lake City building stone from the quarry on said adjacent tract, in which quarry, it appears, Young was largely interested, had after nine years of unsuccessful operation of the road, sought permission of the utilities commission to dismantle the track and equipment and discontinue operation of the road for the reason, it would seem, that the demand there for red and white sandstone of the quarries had fallen off as a result of the growth of the cement industry, just when the line was completed. This showing very strongly tends to sustain the conclusion heretofore reached by the Department that the sandstone deposits in part relied upon by the claimant as a basis for one of the locations in question render the land of little, if any, value, on account thereof.

As to the limestone deposits, the existence of which upon portions of the ground is testified to by claimant's witnesses, it is sufficient to say that they have not been demonstrated to be of such quality as to give them any substantial value over and above other limestone deposits of that region which are there shown to exist in immense quantities and more favorably situated with relation to transportation facilities, or otherwise to bring them within the category of mineral deposits subject to location under the mining laws.

There are filed with the motion a number of certificates of analysis of samples of more or less argillaceous limestone alleged to have been taken from the land, which it is declared form an excellent substance for use in the manufacture of Portland cement. It is also stated that disintegrated portions of the same deposits which it is alleged occur in immense quantities on the land, make a very serviceable road surfacing material which has been and is now being used by the authorities of Salt Lake County for that purpose with highly beneficial results.

The Department is not persuaded, however, that as a Portland cement ingredient the deposits referred to are of such an exceptional nature as to warrant the adjudication as mineral of land upon which they may be shown to exist. Nor does the mere fact that a deposit is or may be used in the construction or surfacing of roads render land upon which it occurs mineral land within the meaning of the mining laws.

For the reasons stated no ground is shown to disturb the decision of the Department complained of. It is accordingly adhered to and the motion for rehearing denied.